

Appl. No. 10/764,913  
Reply to Office Action of October 11, 2006

Attorney Docket No. 2003-0305 / 24061.516  
Customer No. 42717

#### REMARKS

Claims 1-37 are present in the application. In view of the remarks that follow, further and favorable consideration is respectfully requested.

#### Withdrawal of Prior Election-of-Species Requirement

The Office Action states on page 2 that a prior "restriction" requirement has been withdrawn. Applicants note that the prior requirement involved an election-of-species, rather than a restriction. The statement in the Office Action is interpreted to mean that the prior election-of-species requirement has been withdrawn.

The Office Action also states on page 2 that Claims 11-35 are withdrawn from consideration as being drawn to a non-elected species. However, since the Office Action withdraws the prior election-of-species requirement, any election made pursuant to that prior requirement is nullified. Thus, pending Claims 1-37 are all currently eligible for examination (subject to a new election-of-species requirement that is set forth in the present Office Action, and that is addressed below).

#### New Election-of-Species Requirement

The present Office Action sets forth a new election-of-species requirement, indicating that the present application contains claims directed to the following two species:

- 1.) Figure 2.
- 2.) Figure 7.

This new election-of-species requirement is respectfully traversed, for the following reasons. First, the Office Action asserts that the species of Figures 1 and 2 are distinct because Species 1 uses a "second" plasma etch to trim a bilayer stack, whereas Species 2 uses a "second" plasma etch to transfer a pattern through an organic layer. However, the fact that the

Appl. No. 10/764,913  
Reply to Office Action of October 11, 2006

Attorney Docket No. 2003-0305 / 24061.516  
Customer No. 42717

specification uses words such as "first", "second", "third" and "fourth" to refer to different plasma etches is merely for purposes of convenience. The embodiments of Figures 2 and 7 each use a plasma etch for trimming, and these embodiments are not distinct merely because the trimming etch in one embodiment is referred to for convenience as a "second" etch, while the trimming etch in another embodiment is referred to for convenience as a "first" or "third" or "fourth" etch. The Office Action merely raises a point of semantics, rather than any actual difference between the two species.

The election-of-species requirement is also traversed because it is not complete. In this regard, MPEP §806.04(e) specifies that "*Claims are never species . . . Species are always the specifically different embodiments*". In an election-of-species requirement, Applicants' claims must be ignored, and the focus must be on the various different embodiments that are disclosed in the application. The present application discloses several different embodiments, and the election-of-species requirement is structured in a manner so that Applicants do not have the option of electing certain disclosed embodiments. For example, in addition to the embodiments shown in Figure 2 and Figure 7, the first paragraph on page 18 of the specification discusses yet another embodiment, and the paragraph bridging pages 18-19 explains that Figure 9 discloses still another embodiment. The Examiner does not have the right to structure an election-of-species requirement in a manner so that it is impossible for Applicant to elect certain disclosed embodiments that are encompassed by the claims (such as the embodiment of Figure 9). The present election-of-species requirement is therefore incomplete and defective, and it is respectfully submitted that it must be withdrawn.

The PTO requires Applicants to reply to an election-of-species requirement, even where (as here) the requirement is defective and Applicants offer a valid traverse. Accordingly, as between the two species identified by the Examiner, Applicants elect under protest Species 1 (i.e. the species of Figure 2). Claims 1-22 and 36 are all readable on the elected species, and at least Claim 1 is generic to both Species 1 and Species 2.

Appl. No. 10/764,913  
Reply to Office Action of October 11, 2006

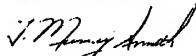
Attorney Docket No. 2003-0305 / 24061.516  
Customer No. 42717

Conclusion

Further and favorable consideration of this application is respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

Although Applicants believe that no fee is due in association with the filing of this paper, the Commissioner is hereby authorized to charge any fee required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone LLP.

Respectfully submitted,



T. Murray Smith  
Registration No. 30,222  
(972) 739-8647

Date: November 7, 2006

HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202-3789  
Telephone: (972) 739-6900  
Facsimile: (214) 200-0853  
File: 24061.516

Enclosures: None

R-150099.1